Department of Justice

FOR IMMEDIATE RELEASE
WEDNESDAY, APRIL 18, 2007
WWW.USDOJ.GOV

AT
(202) 514-2007
TDD (202) 514-1888

JUSTICE DEPARTMENT REQUIRES DIVESTITURES IN AMSTED INDUSTRIES INC.'S PURCHASE OF FM INDUSTRIES

Divestitures Remedy Harm to Competition and Enables New Competitor to Enter Market for Railroad Car Cushioning Units

WASHINGTON — The Department of Justice today announced that it has reached a settlement that will require Chicago-based Amsted Industries Incorporated to divest certain assets in order to remedy harm to competition arising from its December 2005 acquisition of FM Industries (FMI). FMI formerly was a wholly owned subsidiary of Progress Rail Services Holding Corporation. The Department said the acquisition removed Amsted's only competitor in new end-of-car cushioning units (EOCCs) used in the railroad industry, resulted in higher prices, and substantially lessened competition in the market for used EOCCs.

EOCCs are hydraulic devices that protect sensitive cargos by mitigating the forces experienced by railcars during transit and coupling. The Department's Antitrust Division filed a civil lawsuit today in U.S. District Court in Washington, D.C., alleging that the transaction harmed competition. At the same time, the Department filed a proposed consent decree that, if approved by the court, would resolve the Department's competitive concerns.

Amsted's acquisition of FMI was not subject to the reporting and waiting period requirements of the Hart-Scott-Rodino (HSR) Antitrust Improvements Act of 1976 since the value of the transaction did not meet HSR reporting requirements. However, the Department opened an investigation after customers complained that the consummated transaction removed a significant constraint on pricing, resulting in an immediate price increase for EOCCs. According to the Department, the merging companies were the only two manufacturers of new EOCC units and two of only three suppliers of reconditioned EOCC units used in the railway industry. The acquisition left Amsted as the sole competitor in the market for new EOCCs and the dominant supplier in the reconditioned EOCC market.

"Amsted's acquisition of FMI substantially reduced competition resulting in higher prices," said Gerald F. Masoudi, Deputy Assistant Attorney General in the Department's Antitrust Division. "This divestiture will create an opportunity for a new entrant to enter the markets for EOCCs and restore competition to these markets."

The Department said that the proposed consent decree requires Amsted to divest all of the intangible and other manufacturing assets needed to produce new and reconditioned EOCCs that it acquired from FMI. Because the FMI business was discontinued as a result of the transaction and Amsted has only one facility that manufactures EOCCs, the decree requires Amsted to grant a perpetual license to its own intellectual property to account for gaps in the FMI assets. The divestiture and license grant will be conveyed to an approved buyer, to facilitate that company's entry into the markets for new and reconditioned EOCCs. The Department said that the divestitures will enable that company to become a viable EOCC supplier and compete with Amsted.

In addition, under the proposed consent decree Amsted will be prohibited from acquiring any assets of or any interest in the development, production, or sale of EOCCs in the U.S. if the value of such acquisition exceeds $1 million without first notifying the U.S. through procedures set out in the decree, unless the transaction is otherwise subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act. This notification requirement runs for a period of 10 years.

Amsted is a diversified manufacturer of industrial components serving primarily the railroad, vehicular, and construction markets. Its products include a range of railroad car parts, including couplers, side frames, bolsters, draft gears and hydraulic cushioning devices. In 2005, Amsted reported sales of $2.5 billion. Amsted's EOCC sales in the U.S. are made through ASF-Keystone Inc., a subsidiary of Amsted Industries, headquartered in Granite City, Ill.

As required by the Tunney Act, the proposed consent decree, along with the Department's competitive impact statement, will be published in the Federal Register. Any person may submit written comments concerning the proposed decree during a 60-day comment period to Maribeth Petrizzi, Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, N.W., Suite 3000, Washington, D.C. 20530. At the conclusion of the 60-day comment period, the Court may enter the final judgment upon a finding that it serves the public interest.

###

07-262